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SUBJECT: DISAPPOINTING COURT DECISION ON CICIACS

11. (U) The Ambassador and PolOff attended the presentation of the Constitutional Court's decision regarding the constitutionality of CICIACS on August 6. Disappointingly, the judges ruled that many of the robust elements of the agreement conflict with the Guatemalan Constitution. Most significantly, the Court decided that CICIACS could not legally conduct investigations or prosecutions, noting that only the Public Ministry and Judiciary can assume these roles. According to the Court, CICIACS could act as a co-plaintiff in prosecutions, but with the same restrictions that apply to a private Guatemalan citizen (i.e. they can act only through the Public Ministry, the judge can remove them at any time based on an objection of the prosecution or defense, etc.). While foreign CICIACS representatives could receive diplomatic immunity, Guatemalan employees would not. Additionally, the magistrates announced that CICIACS did not qualify as an international accord on human rights, which could have offered legal arguments for a much broader mandate under Guatemalan law.

12. (SBU) Comment: Though Human Rights Ombudsman Sergio Morales and civil society publicly state that they will find new strategies to move CICIACS forward, the Court's decision narrows the prospects. Privately, Claudia Samayoa from the Coalition for CICIACS and Morales were despondent and told the Ambassador and PolOff that they had little hope for salvaging the proposal. The Ambassador told the Guatemalan press that the Embassy was "disappointed, but that we respected the decision of the Court and would study their judgment further." PolOff spoke with MINIGUA Political Analyst Jared Kotler, who said that the UN would still entertain GOG offers to negotiate. However, today's ruling cut most of the "teeth" out of CICIACS, and UN donors are unlikely to invest in an crippled institution. Post will further consult with the UN, GOG, and civil society to evaluate possibilities of reviving CICIACS.

HAMILTON